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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 09/954,544  | 09/12/2001  | Henry R. Halperin    | 212/220                       | 6993             |
| 23371   | 7590        | 06/14/2005           |                               |                  |
| CROCKETT & CROCKETT<br>24012 CALLE DE LA PLATA<br>SUITE 400<br>LAGUNA HILLS, CA 92653 |             |                      |                               |                  |
|   |             |                      | EXAMINER<br>DEMILLE, DANTON D |                  |
|   |             |                      | ART UNIT<br>3764              | PAPER NUMBER     |

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/954,544

Applicant(s)

HALPERIN, HENRY R.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 10, 14-16, 19 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 14-16, 19 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**4. Claims 1, 14, 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-32, 37 of copending Application No. 10/192771 in view of Kelly et al. 5,738,637.**

5. Kelly in figure 9 teaches an automatic controller that includes a computer that can be programmed to operate the cyclic contractions of the band at a rate sufficient to perform CPR. It would have been obvious to one of ordinary skill in the art to modify the application claims to include a controller programmed to operate the contraction of the bands at a rate and tightness sufficient to perform CPR.

6. This is a provisional obviousness-type double patenting rejection.

**7. Claims 1, 14, 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-17 of copending Application No. 10/464818 in view of Kelly et al. 5,738,637.**

8. It would have been obvious to one of ordinary skill in the art to modify the application claims to include a controller programmed to operate the contraction of the bands at a rate and tightness sufficient to perform CPR.

9. This is a provisional obviousness-type double patenting rejection.

10. **Claims 2-7, 10, 15, 16, 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-16 of copending Application No. 10/192771 in view of Halperin et al. 4,928,674 and Whitney 4,453,538.**

11. Claims 12-16 of application '771 recite a plurality of bladders or fluid-receiving cells.

12. Halperin teaches using a microcomputer to control the operation of inflating fluid-receiving cells for compressing the chest of a CPR patient. Microcomputers are conventional controllers that are programmed to perform the required operations.

13. Whitney is cited to teach the use of a cushion between the band of fluid-receiving cells that are repeatedly inflated and deflated to constrict a compression band around the body. The cushions are to protect the body and provide a degree of comfort and cushion as the band is constricted around the body.

14. It would have been obvious to one of ordinary skill in the art to modify the claims of application '771 to include a conventional microcomputer as taught by Halperin to control the repeated inflation and deflation of the fluid receiving cells and to include a cushion between the band and the patient as taught by Whitney to protect the patient from direct contact with the constricting band.

15. This is a provisional obviousness-type double patenting rejection.

**16. Claims 1, 14, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baldwin 5,743,864.**

17. Baldwin figures 4-6 teach a band 28 attached to a driver mechanism for contracting the band about the chest of the patient. A fluid cushion 32 is disposed between the chest of the patient and the band 28. Control system 40 controls the rate and pressure of the system for purposes of CPR.

**18. Claims 19, 22, 23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halperin et al. 4,928,674.**

19. Broadly, Halperin teaches a band 10 that extends around the chest of the patient. The inflation mechanism is operably connected to the band for contracting the band. As the inflatable band inflates the band will constrict about the chest of the patient. The band 10 includes the inflatable bladder as a cushion and is sized and dimensioned to cover substantially the entire anterior portion of the chest including the sternum. The microcomputer 20 controls the inflation mechanism to contract the band at a rate and pressure sufficient to perform CPR. The inflatable cushion is placed on the chest of the patient and is secured around the chest of the patient. While Halperin appears silent regarding to the programmed control of the operation of the device, the examiner takes judicial notice that microcomputers conventionally include programmable memory in which to store programs designed to operate the device.

20. The same would apply to claim 22 because as the material that makes up the band expands as the bladder portion expands, the length of the band would decrease as the bladder expands inward thereby constricting the band.

**21. Claims 2-7, 10, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schock et al. 5,490,820 in view of Chang '889 and Whitney 4,453,538.**

22. Schock teaches a plurality of fluid-receiving cells extending around the chest of the patient for applying CPR. Schock teaches an automated controller for controlling operation of the device however, appears silent whether or not the controller is programmed to perform CPR. Microcomputers that are programmable are well known conventional machines in which to carry out the operation of such systems. While the plurality of fluid-receiving cells are individually applied around the patient's chest it would have been obvious to support all of the bladders in a continuous band such as taught by Chang for ease in placement on the chest of the patient. Providing a cushion between the constricting members and the chest of the patient would have been an obvious provision in view of Whitney. It would have been obvious to one of ordinary skill in the art to modify Schock to support the plurality of inflatable cells in a single band as taught by Chang for ease in placing all of the cells around the chest of the patient and to include a cushion between the band and the chest of the patient as taught by Whitney to protect the patient from the constricting band.

**23. Claims 23, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al. 5,738,637.**

24. Broadly, Kelly teaches a band 40 and a driver-translating mechanism disposed between the chest of the patient and the band for translating forces from the band to the sternum of the patient. Figure 9 teaches a computer control mechanism for automatically controlling the operation of the device. The examiner takes judicial notice that computers include programmable memory in which to store operational parameters in which to carry out its

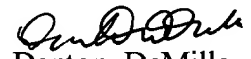
function. Kelly teaches many different equivalent translating mechanisms including a hydraulic version. The hydraulic version would comprise a non-compressible fluid. A longitudinal shaft 34 is also taught.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

13 June 2005

  
Danton DeMille  
Primary Examiner  
Art Unit 3764